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OFFICE OF BUILDING INSPECTION

Federal Communications Commission
Washington, D. C. 20554

Re: MM Docket No. 97-182
Preemption of State and Local Zoning and
Land Use Restrictions on the Siting,
Placement and Construction of Broadcast
Station Transmission Facilities

Gentlemen,

After reading the reference document regarding the preemption of State and Local zoning and Land Use Restrictions concerning the placement and construction of broadcast station transmission facilities, the City of Hazard Planning and Zoning Board is categorically opposed to any such ruling by the FCC. By passage of such a ruling by the FCC, the cities and zoning boards would have little or no ability to protect our towns from the construction and/or installation of transmission facilities not compatible with the local character of construction or land use.


On behalf of the City of Hazard and the Planning & Zoning Board, I urge that such preemption of State and Local Zoning and Land Use Restrictions **not** be granted. By copy of this letter we are notifying Senator Wendell H. Ford, Senator Mitch McConnell and Representative Hal Rogers to work on our behalf to defeat any such ruling.

Very truly yours,

CITY OF HAZARD


B. J. Ewen, Building Inspector

c/c Senator Wendell H. Ford
Senator Mitch McConnell
Representative Hal Rogers
Mayor William D. Gorman

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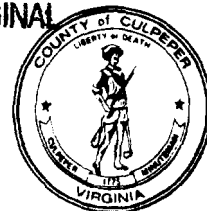
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OFFICE OF
COUNTY ATTORNEY

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COUNTY OF CULPEPER

302 North Main Street
Culpeper, Virginia 22701



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October 20, 1997

Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: Notice of Proposed Rule Making, MM Docket No. 97-182

Dear Sir/Madam:

I write to comment on the above-referenced NPRM, which I oppose as County Attorney and Legislative Liaison for Culpeper County, Virginia, for the following reasons:

1. Local zoning authorities, not a federal agency, are better suited to determine on a case-by-case basis the appropriateness of the location of a telecommunications broadcast tower. Zoning and land use determinations are traditionally and appropriately a matter of local concern. No federal agency can set standards for every conceivable local situation.
2. The time limits set forth in the proposed rule are shockingly unrealistic and improper.
 - A. Under Virginia law, zoning determinations must be made after reference of the matter to the local planning commission, which makes a recommendation to the governing body after a public hearing. The governing body then makes a determination after its own public hearing. In Culpeper, each meets once a month. Before consideration, applications must be reviewed by local staff and various state agencies. It would be impossible to meet the deadlines set forth in the proposed rule on zoning determinations. Given the many considerations that make up informed legislative zoning determinations, Virginia law allows up to one year to make such determinations. As a practical matter in Culpeper County, however, most zoning determinations are made within 90 to 120 days.
 - B. Under Virginia law, site plan and subdivision determinations are required to be made within 60 days from application. If they are not determined in a timely manner, they are deemed approved. As site plan and subdivision reviews are ministerial and not legislative, the Virginia legislature has already set time limits which are appropriate and reasonable.

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- C. As a good example of why the time limits in the proposed rule are unreasonable, I submit the following. I received notice of this NPRM on October 1, 1997. The next scheduled meeting of my Board of Supervisors is November 5, 1997. The next meeting of the Planning Commission is November 12, 1997. If the notice I received of the NPRM had been a site plan application to modify existing broadcast transmission facilities, it would have been impossible to meet the proposed rule's time limit of 21 days to make a final determination on the application. A decision would be made approximately 60 days later. If the notice had been an application for rezoning for a new facility, given the legal requirements for public hearings before the Planning Commission and the Board of Supervisors, the earliest the application could be granted -- assuming timely state and local agency review and a complete application with no issues which required further time for inquiry -- would have been approximately 90 days later, in January of 1998.
3. The proposed rule's preemption is over broad as to the localities affected. The driving purpose behind the proposed rule is to allow timely development of digital television ("DTV") in certain top markets. Networks in the top ten markets must be on the air with DTV by May 1, 1999. Networks in the next ten markets must follow suit by November 1, 1999. I question the need for preemption and an expedited review, even in these localities in Virginia, given the time limits already in place. However, this is especially true in smaller localities without an expedited schedule, where no reason exists why an expedited review or preemption could be important.
4. The proposed rule's preemption is over broad as to types of facilities affected. Again, the proposed rule would be intended to expedite development of DTV. However, the proposed rule would preempt zoning controls over every type of broadcast antenna, whether involved in DTV or not. Control over the location of radio towers is even affected. This is significant to a community like Culpeper County, which has few, if any, TV towers, but many other types of towers, such as radio and cellular.
5. The proposed rule is "overkill" and assumes the worst of local governments. Problems in meeting the proposed DTV roll-out schedule due to a few possible zoning or land use related delays could be more easily addressed by case-by-case extensions in the FCC schedule, rather than turning well-settled zoning and land use laws on their head, setting up contradictory zoning review procedures, and requiring procedures which would be illegal under existing Virginia law.
6. The proposed rule inappropriately gives a preference to broadcast companies over every other company or landowner which must comply with zoning requirements in localities. All companies or individuals with a proposed development or land use, not just broadcast companies, have deadlines to meet and must comply with the same laws regarding zoning and land use. The proposed rule would move broadcasters to the head of the line and give this specific industry an inappropriate advantage. Far from seeking "equal treatment," the broadcast industry is seeking an undue advantage which Congress did not intend in the Telecommunications Act of 1996.

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7. The proposed rule sends appeals of zoning determinations to alternate dispute resolution or the FCC, rather than the state courts, which have experience and demonstrated ability in the area of local zoning regulation. It forces a locality such as Culpeper County to defend its interests before a federal agency rather than in a local court. Companies that seek to do business in a locality should expect to have its local zoning and land use disputes with that locality resolved in that locality, rather than before a federal agency. From a due process perspective, the company could reasonably anticipate suit in the locality, but the locality does not reasonably expect to litigate local land use matters -- which locality did not invite or institute -- in Washington, D.C. before a federal agency.
8. Culpeper County has not had any complaints from tower owners regarding the time it takes to resolve siting issues. In the last several years, no zoning request for a tower siting has taken longer than 120 to 150 days. The average such request takes 90 days from the date of application. Site plans and subdivision plats are reviewed and a decision rendered within approximately 60 days, as provided by state law. Significantly, no application for a rezoning or site plan to allow the construction of a tower has been denied. There are no glaring problems or impediments to DTV implementation in Culpeper County which need correction by the proposed rule.

While this is my comment as County Attorney and Legislative Liaison for Culpeper County, Virginia, it is consistent with positions taken in the past by my Board of Supervisors. My Board was unable to take a formal position, given the 21 days left in the comment period when we received notice of the proposed rule.

If you have any questions, please do not hesitate to call.

Sincerely yours,



Andrew R. McRoberts

County Attorney and Legislative Liaison

ARM/s

cc: Board of Supervisors
Steve Miner, County Administrator
John Egertson, AICP, Planning Director
Aubrey Rozell, Zoning Administrator
Jim Campbell, Executive Director, VACo
Larry Naake, Executive Director, NACo

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October 16, 1997

Secretary
Federal Communications Commission
Washington, DC 20554

Ref. Docket 97-182

Gentlemen:

This organization is a non-profit educational institution that seeks to promote general aviation by protecting and preserving airports, protecting our airspace and teaching safety. As such we believe we are qualified and must comment on your proposal to pre-empt FAA, State and Local efforts to protect the airspace.

Your proposal would result in an unmitigated disaster for the U.S. economy and would defeat the safety efforts we, other aviation interests, state commerce and aeronautics departments and legislatures have been working on for many years. By allowing the FCC to regulate issues of aviation safety, about which the FCC has amply demonstrated it has not the slightest inkling of understanding, the safety of our seventeen thousand airports in the U.S. would be seriously threatened. Worse yet, local and state officials would not be aware safety would be compromised and if they did become aware of tall tower intrusions would have no power to correct the problems you would have created.

America relies upon its general aviation airports for transport of people and goods in and out of the mainstream of commerce. If pilots cannot access our airports safely they will cease using them. Further, countless agricultural operations rely on the airports and thousands of off-airport landing sites for spraying and seeding operations all of which would be threatened and possibly even closed down if state, federal and local protestations against intrusions into the airspace are removed.

Because the FAA's airspace protection programs are limited and largely ineffective we have instituted statutory measures in many states to give state authorities the power to deal with safety threatening airspace intrusions (Ohio, Kentucky and Michigan for example). Your proposals would largely negate these vital safety efforts.

Flight Freedom Foundation

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Federal Communications Commission

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Terminate further discusison of the concepts in 97-182. You could wreak grave harm to the U.S. economy, to say nothing of the thousands of lives that would be lost as a result of your efforts.

Sincerely yours,



Peter H. Burgher
Chairman

phb:ed

cc: Sen. John Glenn
Sen. Carl Levin
Sen. spencer Abraham
Rep. Debbie Stabenow
Wm. E. Gehman, MDOT
John Cornett, ODOT
Tom Poberezny, EAA
Phil Boyer, AOPA